

**R.D. # 0011-04
Teterboro, NJ**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

QUEST DIAGNOSTICS INCORPORATED¹

Employer

and

CASE 22-RC-12482

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL 917, A/W
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

The Petitioner seeks to represent a unit of about 125 drivers/couriers² employed by the Employer at its Teterboro, New Jersey facility, excluding all office clerical employees, professional employees, confidential employees, managers, guards and supervisors as defined by the Act, and all other employees.

The Employer contends that employees in its logistics department, which includes in addition to the drivers, the categories of dispatchers, field operations employees, package preparation employees, mailroom employees and fleet maintenance employees, share a

¹ The Employer's name appears as amended at the Hearing.

² Referred to as drivers in this decision.

community of interests with the petitioned-for employees and must therefore be included in the directed unit. The Employer further contends that the scope of the unit must be expanded to include the remaining seven facilities in its New York/New Jersey business unit.³

Based on the following facts and analysis, I find appropriate a single facility unit of drivers employed at the Employer's Teterboro facility. I further find that the Employer's logistics department employees do not share a sufficient community of interests with the petitioned-for employees such that it would render the drivers unit inappropriate.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,⁴ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵
3. The labor organization involved claims to represent certain employees of the Employer.⁶
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

³ The additional facilities, which the Employer would include in the unit, are located in Toms River, New Jersey, East Brunswick, New Jersey, New York, New York, White Plains, New York, Newburgh, New York, Albany, New York and Plattsburgh, New York.

⁴ Briefs filed by the parties have been considered.

⁵ The Employer is a Delaware corporation engaged in the business of collecting medical specimens, testing the specimens, and reporting the results of the tests to healthcare providers from its Teterboro, New Jersey facility, and other facilities located throughout the United States.

⁶ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:

All full-time and regular part-time drivers/couriers employed by the Employer at its Teterboro, New Jersey facility, excluding all office clerical employees, professional employees, dispatchers, field operations employees, package preparation employees, fleet maintenance employees, mailroom employees/clerks, confidential employees, managerial employees, guards and supervisors as defined by the Act, and all other employees.

II. Facts

1. The Employer's Operations

The Employer provides medical testing services to physicians and hospitals. It operates a medical laboratory; picks up specimens from health care providers and its own testing centers; and delivers to providers necessary supplies with which to conduct medical tests, as well as the results of those tests. The Employer operates its business from approximately 30 laboratories throughout the country. For organizational purposes, the Employer has divided itself into business units, which have their own finances, billing, purchasing, human resources and management. At issue in the instant matter is the Employer's New York/New Jersey business unit. The New York/New Jersey business unit consists of the Teterboro, New Jersey laboratory and logistics department; the aforementioned seven facilities, which it refers to as hubs, located in New York and New Jersey; and stand-alone testing centers. Most of the Employer's laboratory work in the New York/New Jersey unit is performed at the Teterboro location.⁷

The distances separating Teterboro and the hubs are substantial. The closest hub, Manhattan, is 8 miles away. The next closest hub, White Plains is about 30 miles from Teterboro. Toms River and Newburgh are about 55 to 60 miles from Teterboro, Albany 140 miles and Plattsburgh 290 miles away.⁸

⁷ The Employer also operates a laboratory in New York, NY to perform testing on specimens collected in New York, which are picked up and processed on a rush basis.

⁸ The Plattsburgh hub is at such a distance that specimens are flown to the Teterboro laboratory for testing.

The Employer picks up specimens from its clients and its testing centers and delivers them to the laboratory where they are processed, labeled and tested. Test results are then entered into the Employer's computer system from which a testing report is produced. Those reports are then delivered back to the client, through use of the Employer's vans and automobiles. The Employer also sells testing supplies to its clients.

2. The Employer's employees

The Employer's logistics department is responsible for the pick up and delivery of specimens, reports and supplies. At the Employer's Teterboro facility, it employs drivers to pick up the specimens and deliver the testing results and supplies.⁹ Some of the Employer's drivers have regular routes to specific areas where clients are visited regularly, daily, multiple times per day or on an as needed basis. Other drivers are utilized only for "stat," or rush, pick up and deliveries, while a third category of "swing" drivers are experienced drivers who can fill in for drivers who are out sick, on vacation or otherwise not working. At the start of each shift the drivers pick up a route sheet, which lists all pick up and deliveries for the day. They then obtain dry ice from coolers for use with specimens that must be kept cold. Supplies that the drivers are to deliver to clients are usually loaded in the vehicles before the drivers arrive at work, but drivers do load last minute supplies.

The Employer's dispatchers, the majority of which are located in Teterboro, take calls from clients as to when a pickup is needed and make entries into the Employer's computer system, which are then entered on the route sheets.¹⁰ The field operations employees print the daily route sheets and leave them on a table for the drivers to take. Dispatchers also communicate either by text message or walkie-talkie with the drivers as to any changes in their routes.¹¹ The record indicates that on "rare" occasions, dispatchers drive to do priority pick-ups.

⁹ There are some 125 drivers at the Employer's Teterboro facility of a total of about 250 drivers employed in the entire business unit.

¹⁰ The Employer employs approximately 15 dispatchers in Teterboro and 2 in Manhattan.

¹¹ While the record indicates that drivers check with dispatchers before leaving the facility to start their routes, there was an unexplained inconsistency in the record: dispatchers work in a locked office, until recently there was a sign prohibiting drivers from entering that office and the Employer's witness testified that he would ask a driver he found

There are approximately 18 package preparation employees based in Teterboro. These employees pick and package the supplies that have been ordered by clients, label the packages and place them in bins for particular routes and delivery or pick up to the hubs. Early in the morning, before the drivers arrive at work, package preparation employees also “pre-load” the vehicles with supplies that are to be delivered later in the day. To perform this “pre-loading,” the package preparation employees bring the vans from where they are parked to the loading area, load them and then return the vans. They do not drive the vehicles off the Employer’s premises and do not interact or even meet with drivers when they perform this function.

Mailroom employees receive the testing reports and sort them by route and sequentially within routes and place them in slots for the drivers. There are two separate bins for the East Brunswick and Newburgh hubs in which reports are placed for pickup by a driver from each of those hubs. At the other hubs, reports are printed either by the drivers themselves or field operations employees. The record revealed that in addition to mailroom employees, Teterboro drivers also sort reports prior to leaving for their routes.

The Employer has approximately 20 field operation employees in various locations. Field operations employees print route sheets, take supply request order calls from clients and enter this order information into the computer system, which then generates pick lists for use by the package preparation employees. Clients can also order supplies by sending a note or supply order form to field operations through a driver.

The Employer also has one fleet maintenance employee at Teterboro, who fuels, maintains and performs safety checks on the vehicles.

The Teterboro facility and the seven hubs have geographic areas in which their drivers’ routes are located. As testing reports and supplies come from Teterboro, couriers from the hubs either come to the Teterboro facility with deliveries of specimens and to pick up supplies, or transfers are made between a courier from Teterboro and one of the hubs.

inside the office to leave. The record was silent as to how drivers check with dispatchers before leaving the facility for the day if they are precluded from entering the office where dispatchers work.

Thus, there are no package preparation employees at the hubs. In the Toms River, Newburgh and Albany facilities, there are no field operations employees, so drivers print out their own route sheets.

3. Supervision:

As to the drivers based at the Teterboro facility, those who operate in Northern New Jersey are supervised by one individual; those covering routes in Manhattan are supervised by another individual, who also supervises the mailroom employees. Drivers with routes in the outer boroughs of New York City are supervised by a third individual and yet another individual supervises those with the rush pick-ups in northern New Jersey.

The hubs have their own supervision: an individual located in the Manhattan facility supervises the priority routes based in Manhattan.¹² An individual who works out of East Brunswick supervises the East Brunswick and Toms River, New Jersey hubs. The White Plains and Newburgh, New York hubs are supervised out of White Plains; an individual who is located at the Albany hub supervises the Albany and Plattsburgh, New York facilities.¹³ Hiring, firing, and discipline decisions are made at the supervisor level, as is training and appraising of individuals for purposes of merit increases.

4. Other community of interest factors

The record indicates that drivers are the only individuals who spend the vast majority of their time out in the field making pick-ups and deliveries from clients, interacting with the Employer's clients face-to-face. While dispatchers spend the majority of their time speaking with clients, they do so at a desk, over the phone from a locked office. Field operations employees also have client contact, but they spend their time entering orders on the computer and producing route sheets. The record showed little evidence of interaction between drivers and the other logistics department employees and virtually no overlap between their duties.

¹² The parties stipulated at hearing that the supervisors at the hubs are supervisors with the meaning of Section 2(11) of the Act.

¹³ While one driver who clocks in and out of Teterboro is actually assigned to the White Plains hub, the driver is still supervised by the White Plains supervisor.

While the record established some contacts were made between a Newburgh driver and a Teterboro driver for the purpose of delivery of specimens for testing, the record indicated no such contact with Teterboro drivers and drivers from the other hubs. A few drivers from the other hubs go to Teterboro to pick up supplies, testing results and to deliver consolidated specimens, but the record established no evidence that they interacted with either Teterboro drivers or other employees in the logistics department on those occasions.

The record contained evidence of 25 transfers over six years within classifications in the Teterboro facility, between Teterboro and the hubs and between hubs. All of the transfers were undertaken at the request of the transferring employees.

The human resources department and management of the logistics department are centralized out of Teterboro. Many of the terms of employment of the Teterboro drivers and those at the hubs and the rest of the logistic department employees are the same: standard operating procedures, benefits, length of work day, break times, a common new employee orientation and a common employee handbook. All additional training is conducted at the supervisory hub based level. Drivers undergo driver safety training and hazardous materials handling training, which the other logistics employees do not.

Wage rates differ for the different classifications of logistics employees. Field maintenance employees earn at the lower end of a wage classification starting at \$8.79 an hour, mailroom and package preparation employees earn between \$8.79 and \$13.34 an hour, “stat” drivers earn between \$9.67 and \$14.64 an hour, regular drivers earn between \$10.64 and \$16.10 an hour, “swing” drivers earn between \$11.70 and \$17.72 an hour and dispatchers earn between \$12.86 and \$19.49 an hour.¹⁴ Additionally, wage rates between Teterboro and the hubs at Albany and Newburgh vary and are based on pay rates associated with the markets in which the facilities are located. To that end, the wage rates for Albany and Newburgh compared to Teterboro and the other hubs vary up to almost a dollar per hour, depending on the grade of the employee.

¹⁴ The Employer’s witness was unsure of the wage rates for field operations employees, but testified that they earn hourly wages beginning either at \$9.67 or \$10.64 an hour.

III. ANALYSIS AND CONCLUSIONS

1. Drivers as an Appropriate Unit.

In making a determination as to whether a petitioned for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioning union be an appropriate unit for purposes of collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). The Act only requires that the unit sought be an appropriate unit for the purposes of collective bargaining. *National Cash Register Co.*, 166 NLRB 173, 174 (1966).

Although the unit sought by a petitioning labor organization is a relevant consideration in determining the scope of a bargaining unit, a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to the unit requested does not exist. *Overnite Transportation Company*, 322 NLRB 723 (1996); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). Although an employer may seek a broader unit and that unit may be appropriate, it does not necessarily render the petitioner's unit inappropriate. *Overnite Transportation Co.*, above.

The Board has rejected application of any fixed rule for the unit placement of drivers and has applied a case-by-case analysis in this area. *E.H. Koester Bakery Co., Inc.*, 136 NLRB 1006 (1962). In so holding, the Board has recognized that the complexity of modern industry generally precludes the application of fixed rules and that drivers, specifically, often possess a dual community of interest, with certain factors supporting exclusion and some factors supporting inclusion in a broader unit. When considering the unit placement of

drivers, the Petitioner's desire as to the unit is always a relevant consideration and it is not essential that a unit be the most appropriate unit. See *Marks Oxygen Co.*, 147 NLRB 228 (1964); *Mc-Mor-Han Trucking Co.*, 166 NLRB 700 (1967); *Peacemaker Mobile Homes, a Division of Lonergan Corp*, 194 NLRB 742 (1971); *Overnite Transportation Co.*, 331 NLRB 662 (2000); *Home Depot USA, Inc.*, 331 NLRB 1289 (2000). The "sole issue to be determined is whether or not the unit requested by the Petitioner is an appropriate unit." *Peacemaker Mobile Homes, a Division of Lonergan Corp*, 194 NLRB 742 (1971).

Clearly, this is a case in which the petitioned-for employees share certain interests with employees the Petitioner seeks to exclude and the unit sought by the Employer is arguably appropriate.¹⁵ However, the Board has found that drivers may constitute an appropriate unit apart from other employees unless they are so integrated with a larger unit that they have lost their separate identity.¹⁶ For the reasons discussed below, I find that, the petitioned-for employees have maintained a separate identity and comprise an appropriate unit.

a. Package Preparation Employees

The Employer's package preparation employees are responsible for picking the supplies that the Employer sells to its clients, packaging and labeling those supplies for the appropriate client, sorting the packages into bins for the appropriate route or hub and, in the case of the "pre-loaders," loading the packages into the Employer's vehicles for delivery.

The petitioned-for employees are primarily responsible for transporting those products. Pre-

¹⁵ In that regard, petitioned-for employees share common benefits, standard operating procedures and similar terms and conditions of employment as the other logistics department employees.

¹⁶ Generally, unit determinations involving drivers depend upon the following factors: (a) Whether the drivers and plant employees have related or diverse duties, the mode of compensation, hours, supervision, and other conditions of employment; and (b) Whether they are engaged in the same or related production processes or operations or spend a substantial portion of their time in such production or adjunct activities. *E.H. Koester Bakery Co. Inc.*, 136 NLRB 1006 (1962).

packaging employees spend no time on the road driving to client's facilities and making deliveries. While they share common benefits and follow the same employee handbook, their wages and supervision differs. I find, therefore, that they do not share sufficient community of interest to warrant inclusion in a unit with the drivers.

b. Field Operations Employees

The Employer's field operations employees take supply calls from clients, enter the information into the Employer's computer system and generate pick lists for the package preparation employees. While both drivers and field operations employees interact with the Employer's clients, only the drivers do so face-to-face. Field operations employees therefore, actually spend no time in the field. They have different wage rates than drivers and the record revealed no evidence of contact between the two classifications. The record therefore did not establish that the field operations employees share a community of interests with the drivers sufficient to include them in the unit.

c. Dispatchers

Dispatchers take thousands of calls each day from the Employer's clients regarding pickups of specimens and delivery of supplies. They enter data into the Employer's computer system and forward last minute orders to the drivers. Only the drivers make daily deliveries along regularly assigned routes. Thus, even if dispatchers make pick-ups on a rare, emergency basis, only drivers do so with regularity. The evidence also failed to establish that the dispatchers maintain regular contact with petitioned-for employees throughout the day. Dispatchers are paid hourly wages, but at a higher scale than the Employer's drivers.

Without specific evidence that the dispatchers drive delivery routes on a significant and regular basis, I cannot conclude that the classification is "dual function" and must be included in the unit. See *Mc-Mor-Han Trucking Co.*, 166 NLRB 700, 702 (1967) (dual function employees shall only be eligible to vote if they regularly perform duties of unit employees for a significant amount of time). Further, I conclude that the classification of

dispatcher does not otherwise share such a strong community of interests, by virtue of its contact, interaction or common terms and conditions of employment, with the petitioned-for unit such that it must be included therein. See *D & T Limousine Service, Inc.*, 328 NLRB 769 (1999); *The Salvation Army, Inc.*, 225 NLRB 406 (1976); *St. John's Associates, Inc.*, 166 NLRB 287 (1967).

d. **The Remaining Employees**

The remaining employees - one fleet maintenance employee and seven mailroom employees or clerks - do not transport the Employer's products. Although drivers sort their own reports, as do mailroom employees, the record was devoid of evidence to suggest that the drivers and mailroom employees perform this task together. Additionally, mailroom employees remain in their office at the Teterboro facility all day, whereas the drivers spend, at most, a half hour picking up their paperwork and getting their vehicles at Teterboro. The fleet maintenance employee spends his day maintaining the vehicles on site. Further, both of these classifications are on the low end of the Employer's wage scale. I find, therefore, that these other logistic department employees do not share sufficient community of interest with the drivers to warrant inclusion in the unit.

In addition to their limited interaction, the evidence revealed no significant interchange among petitioned-for employees and the other logistics department employees that the Employer would include in the unit. The petitioned-for employees also report to separate supervision. Thus, although these logistic department employees share certain interests with the petitioned-for drivers, including various terms and conditions of employment, I do not find their common interests so significant and interrelated as to extinguish the separate identity of the petitioned-for unit of drivers. See *Novato Disposal Services, Inc.*, 330 NLRB 632 (2000) (mechanics excluded from unit of drivers); *Mc-Mor-*

Han Trucking Co., 166 NLRB 700 (1967) (mechanics excluded from unit of drivers); *Home Depot USA*, 331 NLRB No. 168 (Aug. 25, 2000) (driver unit distinct from broader unit of employees).

The cases relied upon by the Employer to argue for inclusion of all logistics department employees in the unit with drivers are readily distinguishable from the facts of the instant matter. In *Clinton Corn Processing Co.*, 251 NLRB 954 (1980), the Board found that the training, work schedules and functions of the petitioned for employees did not differ substantially from employees the petitioner would have excluded, where the employer allowed employees to work out of classification on days off or for overtime. Here the drivers' functions and training is substantially different from the employees in other logistics department classifications.

In *Calco Plating Inc.*, 242 NLRB 1364 (1979), drivers spent one half to two thirds of their time driving and the rest of their time in the employer's plants assisting production and maintenance workers and working in close proximity to them, facts not present in the instant matter. The Employer also relies upon *The Kent County Ass'n for Retarded Citizens*, 227 NLRB 1439 (1977), to support its contention that only a logistics department unit is appropriate. This reliance is misplaced; in *The Kent County Ass'n for Retarded Citizens*, unlike here, the Board found the petitioned for wall-to-wall unit appropriate. In the instant matter, the Petitioner is not seeking to represent all of the Employer's logistics department employees.

In *Abilities and Goodwill, Inc.*, 226 NLRB 1224 (1976), relied upon by the Employer, the Board found that the petitioner there artificially attempted to exclude some individuals with the same job functions from the unit. In the instant matter, the petitioned-for employees clearly perform the separate task of driving: a task not done by their co-workers. Likewise in

Seaboard Marine, Ltd., 327 NLRB 556 (1999), the Board found that the clerk-type and inspection duties of the petitioned for classifications were not so dissimilar from duties of many of the classifications the Petitioner arbitrarily sought to exclude. The Petitioner in the instant matter has clearly not attempted to arbitrarily exclude classifications with similar duties to the Employer's drivers.

Based upon all of the above, I find the petitioned-for unit comprised only of drivers appropriate and shall direct an election therein.

2. Single vs. Multi-location unit

The Petitioner has requested a unit composed only of drivers at the Teterboro facility. The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome "by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit." *Id.* The factors that the Board examines in making this determination include: past bargaining history; geographical location of the facilities in relation to each other; extent of interchange of employees; work contacts existing among the several groups of employees; extent of functional integration of operations; degree of centralized versus local control over daily operations and labor relations; and the differences, if any, in the skills and functions of employees. *Id.* at 42, citing *Sol's*, 272 NLRB 621 (1984). These factors must be weighed in resolving the unit contentions of the parties. The burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, above at 429.

The Employer here argues that only the New York/New Jersey business unit is appropriate. In such cases, the party maintaining that a multi-facility unit is the only appropriate unit must show integration so substantial as to negate the separate identity of the single facility unit. *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993). As the Board held in *J&L Plate, Inc.*, 310 NLRB 429 (1993), “a single plant or store unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” See also: *Dixie Belle Mills*, 139 NLRB 629 (1962); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Hegins Corp.*, 255 NLRB 160 (1981). In deciding this issue, the Board considers such factors as centralized control over daily operations and labor relations; employees' skills and job functions; wages, benefits and working conditions; employee contact and interchange; and the geographic proximity of the facilities. *RB Associates*, 324 NLRB 874 (1997); *Sol's*, 272 NLRB 621 (1984); *Dixie Belle Mills*, above.

Based upon a review of the record and on the basis of the following, I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single-facility unit.

As to geography, the Teterboro facility is significantly removed from all the Employer's other hubs, particularly Albany and Plattsburgh. I take administrative notice that even the facility closest to Teterboro, in Manhattan, while a mere 8 miles distant, has unique traffic issues, being located in New York City. While geographical separation is not necessarily conclusive, it is a strong indicator that a single-location unit is appropriate. *Dixie Belle Mills*, 139 NLRB 629 (1962); *Van Lear Equipment, Inc.*, 336 NLRB 1059 (2001). In *D & L Transportation*, 324 NLRB 160 (1997), the Board found a single bus terminal

location to be appropriate where, *inter alia*, the other terminals were between 3 and 21 miles apart. See also *New Britain Transportation*, 330 NLRB 397 (1999) (separation of six and 12 miles). Indeed, the large distances between many of the hubs and especially between the furthestmost facilities, such as the upstate New York hubs and the central and southern New Jersey hubs, would make organization and bargaining in a broader unit difficult. See *Southern California Water Company*, 228 NLRB 1296, 1297 (1977).

Clearly, there is significant evidence of standardized and centralized control of labor and employment policies, procedures and benefits. The human resources department also shares responsibility for the hiring process. However, the hubs either have their own supervision on site or share supervision with one other hub. Those individuals are responsible for the day-to-day supervision of all unit employees. Supervisors have authority to administer discipline up to and including termination and perform evaluations without consulting upper management. Indeed, even the decision to hire additional employees emanate from the facility level.

While the facts describe an operation that is centralized and standardized, a unit less than company-wide can be appropriate, notwithstanding a high degree of centralized administration. *L'Eggs Products Inc.*, 236 NLRB 354 (1978). Here, the presence of local supervisors with their substantial authority is evidence that individuals at the hubs are vested with significant autonomy over local terms and conditions of employment. *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988) (single facility unit found appropriate where local manager conducted initial screening for new hires and was consulted on major disciplinary issues); *Esco Corp.*, 298 NLRB 837 (1990) (single facility unit found appropriate despite

absence of statutory supervisor assigned to excluded facility, where leadman oversaw excluded operation).

Moreover, despite centralization, the Employer's hubs are not so substantially interdependent or functionally integrated that a broader unit is required. *Southern California Water Company*, 228 NLRB 1296, 1297 (1977) (“[O]perations are not so functionally integrated that a cessation of work in one [division] would cause a system wide shutdown of operations”). Here, while the evidence indicates that the Employer's operations at the hubs may be dependent on the Teterboro laboratory for testing, the reverse is not true: the record does not indicate that the Teterboro facility is reliant on a day-to-day basis upon the hubs.

I also find a lack of substantial employee interchange involving the Employer's hubs and Teterboro. The Employer did not produce evidence regarding incidents of employee interchange, such as showing work that has been performed by Teterboro employees at other facilities and vice-versa. The party opposing the single-facility presumption has the burden of presenting sufficient evidence to rebut that presumption and must establish the context and percentage of interchange among the total number of employees. See *New Britain Transportation*, 330 NLRB 397 (1999). In the instant matter the Employer's evidence as to employee transfers failed to meet its burden.¹⁷

Further, even if the Employer's evidence were given significant weight, that evidence would be insufficient to establish substantial employee interchange. Not only did the

¹⁷ In one Board case, *Trane*, 339 NLRB No. 106 (July 29, 2003), the Board distinguished *New Britain Transportation*, above, finding that an employer overcame the presumptive appropriateness of a single facility unit despite evidence of employee interchange that was of only a general nature. However, in *Trane*, the Board determined that the lack of specific evidence as to interchange was combined with other factors, including the absence of any local management or supervision at one facility indicating that there was no local autonomy at that facility. That is not the case here. In *Trane*, the employer's witness testified to ‘hundreds’ of transfers between facilities each year, an easily observable pattern that, if true, the Board described as ‘unchallenged.’ Here no such easily observable pattern was evidenced, rather the Employer had to search a six year period to produce only a limited number of transfers.

Employer produce no evidence of temporary transfers, but also it produced evidence only of some 25 employees being transferred in a six-year period, in a region-wide workforce exceeding 300 employees. Interchange of employees in such limited numbers does not establish that Teterboro relies upon the work force of other facilities or is relied upon by other facilities in the region to operate an integrated enterprise. *New Britain Transportation*, above (200 instances of temporary interchange do not approach the degree of significant interchange where Employer employs over 190 employees). Compare *Purolator Courier Corp.*, 265 NLRB 659, 661 (1982) (interchange factor met where 50 percent of the work force came within the jurisdiction of other facilities on a daily basis); *Dayton Transport Corp.* 270 NLRB 1114 (1984) (presumption rebutted where there were approximately 400-425 temporary employee interchanges between facilities in one year among a workforce of 87).

Moreover, all the transfers in this case were voluntary. The Board gives less weight to voluntary transfers in determining whether employees from different locations share a common identity. *D&L Transportation*, above at 162, fn. 7, citing *Dayton-Hudson Corp.*, 227 NLRB 1436, 1438 (1977).

In sum, I find that the significant autonomy vested in local management, the considerable geographical separation of the Teterboro facility from the Employer's other facilities and the lack of substantial employee interchange outweigh the centralized control of the Employer's labor policies. Therefore, I find that the single-location presumption has not been rebutted and that the requested unit scope is appropriate.

There are a number of cases examining the single vs. multi-facility issue in the context of trucking terminals. I note in particular three of these cases where, based on facts

similar to those involved here, the Board held that a multi-facility unit was not the only appropriate unit.

In *Courier Dispatch Group, Inc.*, above, the Board upheld the determination of the Regional Director that a system-wide unit of courier drivers in the New England region was not the only unit appropriate for collective bargaining. The Board noted, as is true in the instant case, that the Employer's administrative and operational functions were centralized. Unlike the present case, the ultimate responsibility for hire, discharge, and discipline was at a regional level. The interchange consisted of a driver at one facility occasionally beginning a portion of a route assigned to a late-arriving driver at a second facility. The Board relied on the lack of significant employee interchange between the facilities at issue and the absence of evidence of either overlapping supervision or frequent transfers. The Board concluded that the Employer failed to show that the functional integration of its operations was so substantial as to negate the separate identity of the petitioned-for single-facility unit.

In *Esco Corporation*, 298 NLRB 837 (1990), the Board affirmed the Regional Director's decision rejecting the Employer's contention that a unit of warehousemen and drivers at a Seattle, Washington facility was not an appropriate unit separate from the Employer's facilities in Spokane, Washington and Portland, Oregon. The Employer's administrative operations and its labor relations policy were centrally determined. While the Seattle warehouse supervisor was involved in the day-to-day direction and assignment of warehouse employees, the General Manager in Portland made decisions concerning hire, discharge and discipline. There was no interchange of employees among the facilities. There was a history of bargaining in a multi-location unit. The Board described the distance between the facilities, 174 to 346 miles, as "considerable" and noted that the cities were in

different metropolitan areas and, in the case of Portland, as in the present matter, different states. The Board held the lack of regular and substantial interchange or contact between the Seattle employees and employees at other locations outweighed the centralized operations and labor relations, limited local autonomy and the common skills and functions of the employees such that the multi-location unit was not required.

In *Bowie Hall Trucking Inc.*, 290 NLRB 41 (1988), the Board reversed a Regional Director's finding that only a system-wide unit of drivers at terminals in Maryland, Virginia, and North Carolina was appropriate. There the Employer's operations were found to be "integrated" and management and labor relations "centrally controlled." All employees had similar skills and working conditions. There were few transfers between locations. There was no bargaining history and no labor organization sought to represent the employees on a broader basis. The Board found that the terminal manager made more than routine day-to-day decisions, because he conducted the initial screening for new hires and was consulted with respect to major disciplinary decisions. The Board found that the lack of evidence of substantial or significant employee interchange was "most important." Additionally, the Board noted that the geographic separation gained in significance where there were other persuasive factors supporting a unit other than the multi-location unit. Relying particularly on the lack of significant employee interchange, the absence of any bargaining history among the unit employees and the fact that no labor organization sought to represent the employees on a broader basis, the Board reversed the determination that the system-wide unit was the only appropriate unit.

I also observe that in cases involving drivers in the trucking industry, where system-wide units of terminals were required, the facts were distinguishable from the instant case.

In *Dayton Transport Corporation*, 270 NLRB 1114 (1984), where the only appropriate unit was a system-wide unit of three terminals, drivers, unlike in the present case, were frequently assigned to work from terminals other than where they were permanently stationed; when so assigned, they came under the supervision of the local terminal manager. Similarly, in *Purolator Courier Corp.*, 265 NLRB 659 (1982), where the various terminals in the employer's south-central region of the employer's delivery system was held to be the only appropriate unit, employees were "constantly moving from terminal to terminal," where they were subject to the supervision of the local supervisor. No such constant movement exists in the instant matter. There was frequent temporary interchange and permanent transfer between stores justifying a unit encompassing a distribution network of auto parts in the Columbus, Ohio area in *Genuine Parts Company*, 269 NLRB 1052 (1984). The Board relied on functional integration, frequent temporary and permanent transfers and the proximity of facilities as establishing that a multi-facility unit of warehouse/showrooms was the only appropriate unit in *Eastman Interiors, Inc.*, 273 NLRB 610 (1984).

In the present case, there exists centralized control over administrative and labor relations functions and similarity of skills, job functions, wages, benefits and working conditions. However, the hub supervisors exercise authority that is non-routine in that they interview job applicants, perform the annual evaluation of employees, discipline and discharge and arrange for daily coverage of routes of absent employees. See *Courier Dispatch*, above; *Bowie Hall*, above. Additionally, hub supervisors schedule vacations, award overtime and decide requests for personal leave. I find that such a degree of local autonomy is significant and not negated by centralized payroll and personnel functions in a

manner not unique to modern, multi-facility enterprises. *Kapok Tree Inn, Inc.*, 232 NLRB 702 (1977); *Purnell's Pride, Inc.*, 252 NLRB 110 (1980).

Significantly, there have been no temporary transfers and there is virtually no interchange. See *Courier Dispatch*, above; *Sumo Container Station*, 317 NLRB 383 (1995); *Esco Corporation*, above; *Bowie Hall*, above. Compare with *Dayton Transport*, above; *Genuine Parts*, above; *Purolater Courier*, above; *Sol's*, above; *Eastman Interiors*, above. I do not find the trips by drivers from hubs to Teterboro to drop off specimens and pick up supplies or the meeting of two drivers from Newburgh and Teterboro to amount to such substantial or significant contact between the employees of the facilities to the extent that a multi-facility unit would be required. These exchanges involve only a small percentage of the unit. The record evidence establishes that there are one or two such drivers at each facility, out of over 250 drivers in the logistics department. The record revealed no evidence of contact with employees at Teterboro during those times and there is no evidence of any contact that is frequent, substantial or significant. Finally, I note that there are considerable distances between the facilities in the Employer's New York/New Jersey business unit, a factor that gains importance, when there are other persuasive factors against a multi-location unit. *Courier Dispatch*, above; *Bowie Hall*, above; *Esco Corporation*, above. The hubs and Teterboro are in two different states, a difference that has an impact upon labor relations policies. In addition to geographic separateness, local autonomy and the lack of interchange as described above, I note that there is a lack of bargaining history on a broader basis, *Transcontinental Bus System*, 178 NLRB 712 (1969), and that no labor organization is seeking to represent a more comprehensive unit, *New Britain Transportation*, above, *Welsh Co.*, 146 NLRB 713 (1964).

The cases relied upon by the Employer are also readily distinguishable from the facts of the instant matter. In *Brand Precision Services*, 313 NLRB 657 (1994), relied upon by the Employer, there was constant contact among petitioned-for employees and other production employees. Evidence of such contact was not contained in the record of the instant matter. In *Brand Precision Services*, crews consisting of petitioned-for operators and other production employees, who would have been excluded, performed their work at the customer's sites. In this case, it is only the drivers who go to the clients. In *Brand Precision Services*, all employees performed limited functions in each other's classifications and had the same training skills and function. In the instant matter, the drivers are clearly different from the other logistics department employees. Likewise, in *Gateway Equipment Co., Inc.*, 303 NLRB 340 (1991), there was substantial contact and some overlapping of job function not present in this case.

The Employer also relies upon *ACL Corp.*, 273 NLRB 87 (1984), where numerous memoranda indicating the manager's involvement in the minor details of day-to-day operations of the facilities showed centralized management. No such evidence was adduced at the hearing of this matter. In *ACL Corp.* employees had frequent contact with employees from other areas, a fact missing from the case at hand.

The Employer's reliance on *Waste Management of Washington, Inc.*, 331 NLRB 309 (2000), to support its contention that only a multi-location unit is appropriate is also misplaced. In *Waste Management of Washington, Inc.* the Board found there was a lack of autonomy of the separate facilities, which had common supervision, neither of which is true in the instant matter. The Board also found evidence of interaction and coordination of employees, which was not supported by the record in this matter.

Pickering & Co., Inc., 248 NLRB 772 (1980), relied upon by the Employer is also inapposite to the instant matter. In *Pickering*, there was direct involvement of managers in the day-to-day operations of two facilities, employees transferred from one facility to another to satisfy overtime requirements, there was frequent transfer of machinery and equipment and a centralized maintenance crew. The Employer established none of these facts in this case.

The union petitioned for a multi-location unit in *Oklahoma Installation Co.*, 305 NLRB 812 (1991), distinguishing that case from the instant matter, which the Employer nevertheless relies upon. Other factors that readily distinguish that case from this one is that in *Oklahoma Installation Co.*, a substantial number of employees worked at more than one site for the Employer during a two year period and key employees were employed on a multi-site basis.

The Employer also relies on *Commercial Testing and Engineering Co.*, 248 NLRB 682 (1980), where the Board merely added a classification of employees who performed testing, much like the petitioned-for employees there. There is no other classification in the instant matter with duties like that of the petitioned-for drivers.

In *Navato Disposal Services, Inc.*, 328 NLRB 820 (1999), the Board found a multi-location unit appropriate where there was a significant degree of contact and interchange between employees at the facilities, including both permanent transfers and frequent temporary interchange lacking here. Major geographic distances were missing in that case, where all employees shared common wages (unlike the different pay scales in the instant matter) and common seniority (of which there is no record evidence in the instant matter).

I conclude, based on the record as a whole, that the lack of employee interchange, the limited contact between employees throughout the Employer's system, and the presence of non-routine local supervision outweigh the centralization of functions and commonality of skills, such that I cannot find that there is functional integration so substantial as to require a unit including all of the Employer's facilities. In these circumstances, the considerable lack of geographic proximity militates against a finding that only a multi-facility unit is appropriate. I therefore will direct an election in the petitioned-for single location unit of drivers.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who

have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Teamsters, Local 917, affiliated with International Brotherhood of Teamsters, AFL-CIO.**

V. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **July 1, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

VI. RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed

to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **July 8, 2004**.

Signed at Newark, New Jersey this 24th day of June 2004.

/s/Gary T. Kendellen

Gary T. Kendellen, Regional Director
NLRB Region 22
20 Washington Place
Fifth Floor
Newark, New Jersey 07102